

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 07 Civ. 2914 (CLB) (MDF)

5 -----x
6 JOHN CARELLO,

7 Plaintiff,

8 - against -

9 THE CITY OF NEW ROCHELLE, THE NEW
10 ROCHELLE POLICE DEPARTMENT, P.O. GEORGE
11 ROSENBERGEN, AND P.O. JOHN/JANE DOES,
Defendants.

12 -----x
13 October 18, 2007
14 10:25 a.m.

15 DEPOSITION of Plaintiff, JOHN CARELLO,
16 taken by Defendants, pursuant to Order,
17 held at the offices of Wilson, Elser,
18 Moskowitz, Edelman & Dicker, LLP, 3
19 Gannett Drive, White Plains, New York,
20 before Reva Weiss, a Notary Public of the
21 State of New York.
22
23
24
25

A P P E A R A N C E S :

McKENNA McGOWAN LLP

11 Church Street

White Plains, New York 10601

Attorneys for Plaintiff

BY: MATTHEW McGOWAN, ESQ.

WILSON, ELSEER, MOSKOWITZ,

EDELMAN & DICKER, LLP

3 Gannett Drive

White Plains, New York 10604

Attorneys for Defendants

BY: LALIT K. LOOMBA, ESQ.

ALSO PRESTEN:

GEORGE ROSENBERGEN

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED,
by and among counsel for the respective
parties hereto, that the filing, sealing
and certification of the within
deposition shall be and the same are
hereby waived;

IT IS FURTHER STIPULATED AND
AGREED that all objections, except as to
form of the question, shall be reserved
to the time of the trial;

IT IS FURTHER STIPULATED AND
AGREED that the within deposition may be
signed before any Notary Public with the
same force and effect as if signed and
sworn to before the Court.

* * *

1
2 J O H N C A R E L L O ,
3 having first been duly sworn by Reva
4 Weiss, a Notary Public within and for the
5 State of New York, testified as follows:

6 EXAMINATION BY

7 MR. LOOMBA:

8 Q What is your name?

9 A John Carello.

10 Q Where do you reside?

11 A 39 High Street, Armonk, New
12 York 10504.

13 Q Good morning, Mr. Carello. My
14 name Lalit Loomba. I'm an attorney
15 representing the defendants in this case.
16 We are here to take your deposition
17 concerning the underlying incident of
18 January 11, 2006.

19 Have you been in a deposition
20 before?

21 A Yes.

22 Q So you understand that you have
23 been placed under oath?

24 A Yes.

25 Q And that you are obligated by

CARELLO

that oath to answer these questions as truthfully as possible. Do you understand that?

A Yes.

Q Is there any physical reason why you wouldn't be able to answer questions truthfully today?

A No.

Q You understand that even though we are sitting in a conference room in a somewhat informal setting, the answers that you provide today could be used against you in court if a case were to go to trial?

A Yes.

Q If you have any questions about any of the questions that I ask you, please let me know and I will try to rephrase them. Otherwise, I will assume that you understand the questions. Is that fair enough?

A That's fair enough.

Q Could you provide your Social Security number, please.

CARELLO

to the best of your knowledge?

MR. McGOWAN: Are you asking him now or were they true and accurate as to the best of his knowledge on the day he signed it?

MR. LOOMBA: Well, let's break it down. We will make it a two-part question.

Q As of the date that you signed it, were those true and accurate, meaning just the factual allegations contained in paragraph 3?

(Pause.)

A That is true.

Q And as of today, and this was signed on April 6, 2006, so we're approximately a year-and-a-half later --

A It's still true.

Q -- is it still true today?

A Yes, it is.

Q January 11, 2006, do you recall what your business was that day, whether you were going to a particular appointment or whether you had something

CARELLO

else to do?

A I don't recall what I was doing other than driving down North Avenue towards Pelham Road.

Q Do you remember where you were coming from?

A I was coming from home.

Q Do you remember where you were heading other than the general direction that you indicated?

A I can't remember right now.

Q Do you remember how you were dressed?

A I don't remember what I was wearing.

Q Were you wearing a suit and tie?

A No, I was not.

Q Do you remember the day of the week?

A Not off the top of my head.

Q I represent to you it was a Wednesday. You can check the calendar. Based upon your recollection,

CARELLO

would you have had something to do in New Rochelle on a Wednesday?

A I was going to nowhere in particular. It was probably another day for me. I've been retired for some time where I didn't have to report to an office for quite some time, so I was most likely heading to my mom's home, my brother's home or going to get something to eat.

Q Your parents lived in New Rochelle at the time I take it.

A Yes.

Q They still reside in New Rochelle?

A Yes. Just my mom.

Q What kind of car were you driving?

A 2004 Escalade.

Q There came a time when you were pulled over by a police officer, is that right?

A I was pulled over and I found out later that it was a police officer,

CARELLO

yes.

Q Can you recollect approximately when during the day that this occurred, the time?

A I would say between 11 and 12.

Q In the morning?

A In the morning.

Q What was the first thing that you saw or heard that made you aware that you were going to be pulled over?

A I was at a traffic light on North Avenue and Beechmont Drive and an unmarked vehicle pulled behind me and the lights went on the grill and I thought he was trying to get by and I just pulled over to the right-hand side of the road and he pulls up behind me.

Q Were you stopped at the traffic light?

A Yes.

Q This is just past the high school on the right?

A If you are coming down towards Pelham Road, it's past the high school on

CARELLO

the right.

Q And Iona would be just --

A On your left-hand side.

Q -- a little bit up on the left,
is that right?

A That's correct.

Q What lane were you in when you
were stopped at the traffic light?

A I was in the right lane.

Q What did you do when you saw
the lights? I take it you saw them in
your rearview mirror.

A Yes.

Q What did you do when you saw
the lights?

A I pulled over off to the
right-hand side of the road and that car
followed right behind me.

Q Did you have a cell phone with
you at the time?

A Yes.

Q When you first noticed the
lights, if you could take it at that
specific point in time, was your seat

CARELLO

belt on?

A Yes.

Q What happened after you pulled over to the side?

A An African-American male got out of the car and told me that I was speeding down North Avenue and he was going to write me a summons.

Q Can you describe this person with any more specificity?

A Medium height, stocky.

Q What was he wearing?

A He was not wearing a traditional New Rochelle Police --

MR. McGOWAN: He asked you what was he wearing. If you remember, what he was wearing? Not what wasn't he wearing.

THE WITNESS: I'm sorry.

A If I recall, it looked like a sweater.

Q Was this a cold day, by the way, January 11, 2006, do you remember?

A I don't remember.

CARELLO

(Record read: Page 22, lines 4
through 9.)

MR. McGOWAN: Do you want to
pick it up from that point?

Q Where was he standing when he
said that you were speeding?

A He was standing outside my
driver's side window.

Q And you had rolled the window
down?

A Yes.

Q When you pulled your car over,
did you turn the ignition off?

A I don't remember.

Q There were power windows on
that Escalade, is that right?

A Yes.

Q Besides telling you that you
were speeding, did he ask you any other
questions?

A I believe he asked me for my
license and registration.

Q What did you say in response?

A I don't recall, but I know I

CARELLO

gave it to him.

Q After you provided the officer, or this gentleman, with your license and registration, what happened next?

A He went back to his car and came out of the car and he issued me a summons for speeding.

Q Can you estimate how long he was in his car?

A I don't recall.

Q During that time period, did you make any telephone calls on your cell phone?

A Not at that point.

Q When you say he issued you a summons for speeding, what exactly do you mean?

A He came back with something that look like a ticket and claimed that I was speeding.

Q Did he hand you that ticket?

A Yes.

Q And did he return your license and registration?

CARELLO

A Yes.

Q Did he say anything else as he was providing you with those materials?

A Yes.

Q What did he say?

A I don't recall exactly.

Q Did you say anything to him at this point?

A Yes.

Q What did you say?

A I don't know exactly.

Q Was there anyone else in your car at the time?

A No.

Q Had you exited your car at anytime up to this point in the events?

A No.

Q What did the gentleman do after he returned your license and registration and handed you a ticket?

A He made a statement along the lines concerning driver's safety and something along those lines, be careful, and he walked back to his car.

CARELLO

Q After he made that statement,
did you say anything?

A Yes.

Q What did you say?

A I don't recall exactly what it
was. It was something along the lines
like thanks for the advice or thanks for
the warning.

Q Did you say anything else?

A Not that I'm aware of.

Q What did you do next?

A Probably put my license away,
registration away --

MR. McGOWAN: Not probably.

What did you do?

A I can't recall exactly what I
did at that moment after.

Q Did there come a point in time
that you resumed on your way?

A Yes.

Q Can you describe how it was
that you pulled away from the curb?

A Yes. I had my hand out the
window to signal I was leaving the curb

CARELLO

and I pulled away a few feet and then got pulled over again by the same person.

Q Did you turn the blinker on -- I don't know if it's still called the "blinker" -- on your car to indicate you were going to be pulling over to the left?

A No.

Q You only used your hand to signal?

A Yes.

Q Can you describe exactly how it was that you signaled using your hand?

A I don't recall.

Q How far had you moved your car before you ascertained that you were being pulled over a second time?

A Just a few feet.

Q What did you do then?

A I pulled back over to the curb.

Q Then what happened?

A The same person got out of the car and he had his hand on the side where I was lead to believe it was a gun, he

CARELLO

had his hand on there. He came over to the window. I asked him what's the problem. He said I'm giving you a ticket for no seat belt and for not signaling when you left the curb.

Q What led you to believe that it was a gun on the side --

A It looked like a gun. I've seen guns. It looked like a gun.

Q Can you describe it in any better detail than that?

A It was dark color.

Q Was the gun in his hand?

A No.

Q Could you see both of his hands as he approached you the second time?

A Are you talking the palms or the outside?

Q I'm talking about from the wrist to the fingers. Could you see that?

MR. MCGOWAN: This would be looking through his sideview mirror?

MR. LOOMBA: Either that or

CARELLO

MR. LOOMBA: Okay.

Q What did you say in response?

A I told him obviously I'm wearing my seat belt and I signaled as I left the curb.

Q What did he say?

A He said no, you didn't. And he goes -- I'm sorry. He also mentioned that I'm giving you a seat belt ticket from before, not now.

Q How did you respond?

A I said I'm wearing -- at that time when he told me he's giving me a seat belt ticket, I said I'm wearing the seat belt, and he said no, not from now, from before.

Q Did you say anything further?

A I don't recall.

Q Did he say anything further?

A I don't recall.

Q Did he go back to his car?

A Yes.

Q And how long was he in his car, if you can remember?

CARELLO

A I can't remember.

Q Then what happened?

A As he was in his car, I called 911 because I wanted to have someone from New Rochelle Police Department come assist me and make sure everything is on the up and up.

Q And you used your cell phone to call 911?

A Yes.

Q Did an operator answer?

A Yes.

Q What did you say to the operator?

A I don't remember the exact words, but pretty much saying that I was looking for the New Rochelle Police Department to come on North Avenue.

Q Do you remember what they said?

A I got disconnected a few times so I don't remember all those conversations.

Q How many different times were you disconnected?

CARELLO

A I can't recall, but it was
maybe one, two, three times.

Q So you made then subsequent 911
calls, is that right?

A Yes. Exactly.

Q What was your cell phone
provider on January 11, 2006?

A Nextel.

Q Do you have the same provider
today?

A No.

Q What was the telephone number
on that date?

A I don't recall.

Q Who was the owner of the
account with Nextel?

A Beechmont Bus Holding.

Q Is that an LLC or Inc.?

A LLC.

Q How many employees did
Beechmont Bus Holding, LLC have on that
date, January 11, 2006?

A Two.

Q Who was the other one?

CARELLO

A Bruce Mitcheltree.

Q Could you spell his name for the reporter.

A M-I-T-C-H-E-L-T-R-E-E.

That account was just my name and my brother's name. There were two phones on that account.

Q Was it two separate numbers?

A Yes. Two separate numbers.

Q Which of your two brothers was it?

A James Carello.

Q Did he have any connection with Beechmont Bus Holding?

A He would do some freelance work for us.

Q So you called 911 twice or three times? How many times did you --

A I can't recall. It was a few times. It was more than once.

Q Do you understand why you were disconnected?

A I can't recall.

Q When you called back the

CARELLO

subsequent times were you speaking with
the same operator?

A I don't even know.

Q To your understanding, did
you -- at this time, were you transferred
or were you ever on the phone with
somebody at the New Rochelle Police
Department?

A I don't recall.

Q Did anyone identify themselves
in answering your 911 calls as being with
the New Rochelle Police Department?

A I can't recall.

Q The first 911 call, how long
were you on it before it was
disconnected?

A I don't know the exact time.

Q How much of your story were you
able to relate before you were
disconnected?

A Not much at all.

Q Can you just kind of describe
where were you in the recollection of the
account before it was disconnected?

CARELLO

1. A I can't tell you how much time.
2
3 It was very minimal.

4 Q In the second 911 call, did you
5 get any further before you were
6 disconnected?

7 A Pretty much the same thing.

8 Q What about the third call, if
9 there was a third call?

10 A If there was a third, and I
11 know the last call finally someone came
12 on, and I believe they said New Rochelle
13 was on their way.

14 Q Did they identify himself or
15 herself?

16 A Who it was? They may have, I
17 don't recall.

18 Q All these 911 calls are
19 happening when the gentleman, the
20 African-American gentleman, had returned
21 to his vehicle, is that right?

22 A Yes, that's correct.

23 Q And there comes a point in time
24 where he walks back towards your car, is
25 that right?

CARELLO

A Yes.

Q Before that, did another police vehicle arrive?

A I saw there a New Rochelle Police Department vehicle behind his before he gave me the tickets.

Q This is the second and third ticket?

A This is the second and third ticket, yes.

Q Can you describe that New Rochelle police vehicle?

A I couldn't see it. It was behind his car. It was just like the New Rochelle colors.

Q It was a patrol car?

A Yes, I believe so.

Q Did it have lights on?

A I don't remember the lights being on, but it did have police lights above the car.

Q Was there a siren?

A I didn't hear it.

Q Could you see the driver from

CARELLO

where you were standing?

A No.

Q Did the driver of that car ever
get out?

A No.

Q If that car had been
communicating with the African-American
gentleman via radio, would you have been
in a position to observe that?

A No.

Q What happened when he walked
back over to your car the second time?

A He handed me the tickets and
went back to his car.

Q Did you get into a argument
with him at that point?

A No.

Q Did you ask him why he was
giving you the second and third tickets?

MR. McGOWAN: Asked what the
initial --

A Other than what I answered?

Q Other than what you testified
to today.

CARELLO

A I drove away.

Q Where did you go?

A I went to the New Rochelle
Police Department.

Q That would be just down the
road on the left-hand side?

A That's correct.

Q Did you go there directly?

A Yes.

Q Did you make any calls on your
way over, telephone calls?

A I don't recall.

Q Where did you park?

A I parked on North Avenue.

Q And did you go inside the
headquarters?

A Yes.

Q What did you do?

A I went to the front desk and
spoke to the person that was working
there that I would like to make a
complaint.

Q Was that person an officer or a
civilian service officer?

CARELLO

MR. McGOWAN: If you know the difference.

A I don't know the difference.

Q What did that person say?

A Something along the lines that they'll have someone come out and talk to me.

Q Did someone eventually come out?

A Yes.

Q Who was that?

A Sergeant Rosenbergen.

Q When Sergeant Rosenbergen came out and you first met, where were you standing?

A By the front window as you enter the police station.

Q Did Sergeant Rosenbergen take you into a separate area of the Police Department --

A Yes.

Q -- headquarters?

Where did he take you?

A As you walk in, he took me to

CARELLO

the room on the right-hand side of the building.

Q How many doors did you have to pass through to get into that room?

A I don't recall.

Q Was it -- it was at least one, would you say?

A Yes.

Q Were there two?

A I don't recall. I don't know if they were opened, I don't know if they were closed.

Q You don't remember?

A I don't remember.

MR. McGOWAN: Just so you are clear, you definitely went through one closed door?

THE WITNESS: Yes.

MR. McGOWAN: At least one.

Q Do you remember what the room looked like?

A Yes.

Q How large was it?

A It was not that large.

CARELLO

Q Can you approximate dimensions, if you can? Maybe you can't.

A I don't want to guess because I can't be accurate.

Q Were there any windows in the room?

A No.

Q Was there any furniture in the room?

A Yes.

Q What kind of furniture was in there?

A There was chairs and a table.

Q Were the chairs in the middle of the room or up against one of the walls? Where was it positioned?

A It was in the middle, but it could have been against the side wall. I'm not sure.

Q Do you remember how many different chairs were around the table?

A At least two.

Q Were they seated next to each other, opposite sides, at 90 degrees?

CARELLO

What was the orientation?

A I would say one was at an end and another one was at a side.

Q Was there anyone else in the room at this time?

A No.

Q Did you sit down?

A Yes.

Q Did Sergeant Rosenbergen sit down?

A Yes.

Q What happened next?

A I told him of the incident that took place on North Avenue, I felt harassed, and he claimed that I wasn't harassed.

Q When you told him you felt harassed, did you explain why or did you just say "I felt harassed"?

A I told him my story and I told him I felt harassed.

Q What did he say?

A He said he didn't feel I was harassed.

CARELLO

Q Did he provide any explanation?

A Not that I recall.

Q Then what happened?

A We both walked out of the room and I asked him if I could see the supervisor because I felt that I was harassed.

Q Where did you make that request or ask that question of Sergeant Rosenbergen? Were you still in the room when you said that or were you back out in the hallway?

A I believe I was back out in the hallway.

Q What did Sergeant Rosenbergen tell you?

A He said that his supervisor is not here and I would be waiting a long time. Something along those lines.

Q What did you say in response?

A I said I had plenty of time, I'll wait.

Q What did he say?

A I don't think he said anything.

CARELLO

I can't remember if it was verbal or nonverbal response. I don't remember.

Q Did he exit the lobby?

A Yes.

Q And what did you do after he left the lobby?

A I waited in the main lobby.

Q When you say the main lobby, is that the lobby that you were brought back out to by Sergeant Rosenbergen and after the first interview?

A No.

Q I want to make sure I've got it right on the record.

You described a brief interview in an inside room --

A Uh-huh.

Q -- with a table and no windows, is that right?

A That's correct.

Q And then he brought you to a separate location after that interview ended, is that right?

A Outside of that room there's --

CARELLO

it feels like -- I don't know if it's considered a lobby or not, but that's where I told him, outside of that room.

Q Is that where the window is? When you say "outside of that room," is that where the public window is?

A No, you go through another doorway and then there's a window.

Q So when you were talking about wanting to see a supervisor and him saying that a supervisor was not immediately available, this was not in the main, say, the public lobby, but outside the room but inside the door from the public lobby?

A Exactly.

Q Is that right?

A Yes.

Q So when Sergeant Rosenbergen walked away from you at that point, did he open the door that lead out to the public lobby and say you should wait out here, or how did that go?

A No, he walked towards the back

CARELLO

and I walked out.

Q So you let yourself out?

A Yes.

Q When you got back out to what we will call the public lobby, what did you do?

A I waited for about 15, 20 minutes and nobody had come out.

Q And did you make any telephone calls during that period?

A I don't recall.

Q Then what happened?

A Since nobody was coming out to see me, I went to the person at the front window and asked if I could set an appointment up with either the Police Commissioner or someone in Internal Affairs.

Q Was this the same person that you had spoke to originally when you came into the headquarters?

A I don't recall.

Q And what did that person then say?

CARELLO

A He didn't -- it was a male. He didn't say anything. He just got up and left.

Q Then what happened?

A I waited about another ten minutes and then I called the New Rochelle Police Department nonemergency number and I told them my situation and they said someone was going to come out to talk to me.

Q Which phone did you use to make that call?

A My cell phone.

Q Do you know who you spoke with on the other end?

A No.

Q So they said someone would come out and speak with you?

A Yes.

Q Did you sit down and wait some more?

A Yes. But not a long period after that.

Q And then someone came back out?

CARELLO

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A Yes.

Q Who was that?

A It was Sergeant Rosenbergen.

Q Then what happened?

A He asked me to come inside the room with him because he want to read me something.

Q What did you do?

A I followed him inside the room.

Q Was it the same room you were in before?

A Yes.

Q Was there anyone else inside the room at that time?

A No.

Q When you got inside the room, did you sit down?

A Yes.

Q Which chair did you sit on? Was it the end chair or the side chair?

A I was sitting at the end of the table or desk, whatever was in there. I was sitting at the end.

Q As were you seated, what was

CARELLO

1 immediately behind your back?

2 A A wall.

3 Q Was the door on that wall or
4 was that a wall without the door?

5 A A wall without a door.

6 Q Where did Sergeant Rosenbergen
7 position himself?

8 A He sat on the side of the
9 table, which would be on my right-hand
10 side.

11 Q Did he have any documents with
12 him at this point?

13 A He had something in his hand.
14 I don't know what it was.

15 Q What was it, a piece of paper?

16 A It was -- it looked like it was
17 something that he wanted to read. I
18 don't know exactly what it was, but it
19 looked like he had something he wanted to
20 read. I don't know if it was a book, a
21 magazine, paper, a sheet. I don't
22 recall.

23 Q Did he read anything to you
24 when you were inside the room the second
25